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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 09/939,166   | 08/24/2001  | Thomas A. Boynton    | VAC.715             | 4114             |
| 30159  | 7590        | 04/15/2004           | EXAMINER            |                  |
| ATTN: LEGAL-MANUFACTURING<br>KINETIC CONCEPTS, INC.<br>P.O. BOX 659508<br>SAN ANTONIO, TX 78265-9508 |             |                      | DEMILLE, DANTON D   |                  |
|  |             | ART UNIT             | PAPER NUMBER        |                  |
|  |             | 3764                 |                     |                  |

DATE MAILED: 04/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |                |
|------------------------------|-----------------|----------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s)   |
|                              | 09/939,166      | BOYNTON ET AL. |
| Examiner                     | Art Unit        |                |
| Danton DeMille               | 3764            |                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-5,7-19,21 and 23-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-5,7-19,21 and 23-40 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

|  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. ____ .   |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date 7/8/02, 2/27/03. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: ____                                     |

**DETAILED ACTION*****Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because: it was not signed by three of the inventors: Keith Patrick Heaton, Kenneth William Hunt and Mark Beard. It does not identify the mailing address and the city and either state or foreign country of residence of Mark Beard.

***Claim Rejections - 35 USC § 112***

**Claims 8, 9, 19, 21, 23-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.**

Claims 8 and 9 are viewed as incomplete because they depend upon a cancelled claim.

In claim 19 lines 5-6, there is no clear antecedent basis for "said means for applying negative pressure.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-5, 7, 13, 16, 17, 19, 26, 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lina et al. (EP 0777504) in view of Parkin et al.**

Lina teaches a porous pad 36, an airtight dressing 43, means for connecting a distal end of a conduit 37 through the dressing, a removable canister 19, an electric pump, a first filter 46 and a means for managing the power supply column 8, lines 54-58. Lina teaches a control system that converts the 115/120 VAC to 12VDC and voltage regulator to step down the voltage to +5V or 12V for other components. This would appear to comprehend means for managing the power supply source to power pump and other components of the system.

While Lina may teach using only one filter 46 there is no unobviousness to duplicate the filter to insure a higher degree of filtration of fluids from the site. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Moreover Parkin is cited to teach a first filter 42 and a second filter 55 for filtering the suction line from the skin of the patient.

It would have been obvious to one of ordinary skill in the art to modify Lina to use a second filter in line with the first filter as suggested by Parkin and as a mere duplication of essential elements to increase the effectiveness of the filtering of the fluids to prevent contamination of the pump.

Regarding claim 2, the filter 46 of Lina is incorporated into an opening 44 of the canister 19.

Regarding claims 3, 16, the removable canister 19 would provide easy access for sampling wound fluids and would appear to comprehend the claimed limitations.

Regarding claims 4, 17, 19, 21, Lina teaches a handle 14 for securing the device to a hospital bed column 4, lines 1-4.

Regarding claims 36-38, Lina teaches column 11, lines 36-52, microcontroller 72 controls the pump motor 83 by varying the amount of voltage received by pump motor 83 based on the user selected vacuum pump pressure value. The microcontroller 72 outputs a voltage between 0 and 12V DC to pump motor to control its speed. Lina also teaches the intermittent pump operation in column 9, lines 41+. This would appear to comprehend the claimed means for maximizing pump flow rate over a pressure range. The pressure sensor measures the pressure and a control system determines the optimum drive frequency.

**Claims 8, 14, 23, 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 1 above, and further in view of Hyman et al.**

Lina teaches a control system that uses an LCD display 17 to permit programming and control of the apparatus. Using conventional means of saving energy for this portable pump would well within the realm of the artisan of ordinary skill. Hyman teaches a portable pump that uses a means to automatically turn off the backlight display after a predetermined period of time column 12, lines 49-52 to save energy.

It would have been obvious to one of ordinary skill in the art to further modify Lina to turn off the backlight display as taught by Hyman to save power for this portable pump.

**Claims 1-3, 5, 7, 10-13, 16, 19, 21, 26-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt (GB 2,307,180) in view of Parkin et al.**

Hunt teaches a porous dressing 102 at the wound site with suction applied to the wound site via the canister 100 by tube 103. The canister includes a filter 109 at the outlet end of the canister 100. Hunt also teaches on page 6, lines 17-23 a means for managing the power supply source so that while maintaining negative pressure at the wound side the apparatus can be

programmed such that the pump does not need to run continuously to save power and enables the appliance to operate for long periods on its battery power supply.

As noted above, Hunt may teach using only one filter 109 there is no unobviousness to duplicate the filter to insure a higher degree of filtration of fluids from the site. It has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Moreover Parkin is cited to teach a first filter 42 and a second filter 55 for filtering the suction line from the skin of the patient.

Regarding claims 3, 16, the removable canister 100 would provide easy access for sampling wound fluids and would appear to comprehend the claimed limitations.

Regarding claims 10, 11, Hunt teaches a multi-partitioned tube 126 with partition 127 for drainage and partition 130 for sensing pressure at the wound site.

Regarding claim 12, the drainage conduit 126 is resealably connected to the canister for sampling fluids.

Regarding claim 31, Hunt teaches page 6, lines 12-17, varying the negative pressure from a maximum pressure to a target minimum pressure.

**Claims 8, 14, 23, 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunt (GB 2,307,180) in view of Parkin et al. as applied to claim 1 above, and further in view of Hyman et al.**

Hunt teaches a control system that uses an LCD display 213 to permit programming and control of the apparatus. Using conventional means of saving energy for this portable pump would well within the realm of the artisan of ordinary skill. Hyman teaches a portable pump that uses a means to automatically turn off the backlight display after a predetermined period of time

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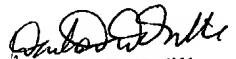
column 12, lines 49-52 to save energy.

It would have been obvious to one of ordinary skill in the art to further modify Hunt to turn off the backlight display as taught by Hyman to save power for this portable pump.

**Claims 18, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claims 1 and 13 above, and further in view of Heaton (WO 01/34223).**

Heaton teaches the foam pad can be made of PVA. It would have been obvious to one of ordinary skill in the art to further modify the references applied to claim 13 and use PVA for the foam pad as taught by Heaton as a conventional foam pad material to provide the details of the type of material used for the foam pad.

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